

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of Southwestern Bell)
Telephone Company – Kansas' Compliance)
with Section 271 of the Federal)
Telecommunications Act of 1996)

STATE CORPORATION COMMISSION

) Docket No. 97-SWBT-41 I-GIT

NOV 03 2000

Jeffrey S. Wassaman Docket
Room

**RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY TO
IONEX COMMUNICATIONS, INC.'S MOTION TO STAY FURTHER PROCEEDINGS**

Southwestern Bell Telephone Company ("SWBT") hereby files its response to
Ionex Communications, Inc.'s ("Ionex's") Motion to Stay Further Proceedings.

INTRODUCTION

1. Ionex's Motion should be denied. The Kansas Corporation Commission ("Commission" or "KCC") has completed this proceeding and there is no further action to be stayed. SWBT received the official copy of the Complaint from the Commission on November 1st, and pursuant to the rules of procedure, has ten days thereafter to file SWBT's written answer. See Attachment A to this response, which is the letter from the Commission, date-stamped as received by the President's office on November 1, 2000. Although SWBT is not required to include its answer to the complaint in this response, SWBT does state herein that the allegations in the complaint are without merit. SWBT is in full compliance with all of the KCC's orders in Docket No. 97-SCCC-149-GIT. Ionex's complaint is nothing more than a billing and contract interpretation dispute, and in no way relates to SWBT's Section 271 application presently pending' before the Federal Communications Commission ("FCC").

2. Ionex's complaint must be handled pursuant to the KCC's rules of procedure, specifically Kansas Administrative Regulations, 82-I-220, and is not a part of this Docket. As the Commission noted at the Administrative Meetings in this Docket, if the Commission were to reserve its opinion on the larger issues of SWBT's compliance with the fourteen point checklist until each and every CLEC-specific complaint were resolved, this matter would never be closed. As a point of fact, it is closed, the Commission has stated its support for SWBT's application, has approved the K2A, and has no further action to take in this Docket. The KCC should move forward on its consultative report to the FCC on the, Commission's conclusions regarding SWBT's compliance with the fourteen point checklist, and handle the Ionex complaint pursuant to the Kansas Administrative Regulations.'

3. SWBT has a right to procedural due process, to respond in writing to the complaint under the timeframes of the rules, to discovery and to a hearing on the issues raised. The complaint is on one track, the KCC's report to the FCC on SWBT's compliance with the checklist is on another one. Ionex should not be allowed to use the

¹ The FCC's Public Notice issued concurrent with SWBT's filing of its Application for in-region interLATA relief in the States of Kansas and Oklahoma, on October 26, 2000, states:

State Commission and Department of Justice Written Consultations. The Kansas and Oklahoma Corporation Commissions must file any written consultation on or before November 20, 2000. *(footnote omitted)* . . . Because the Kansas and Oklahoma Commissions and the Department of Justice are given roles by statute in a section 271 proceeding, copies of all pleadings, including comments, should be filed with those parties.

pending report to the FCC as a cudgel to beat SWBT into giving up its procedural rights in the complaint process or into foregoing its right to develop the facts in dispute.

**SWBT HAS NOT FAILED TO COMPLY WITH THE
COMMISSION'S ORDERS IN THE COST DOCKET**

4. Ionex's statements in its Motion are untrue. SWBT has fully complied with the Commission's orders in the UNE cost docket, Docket No. 97-SCCC-149-GIT. SWBT has filed the UNE Master List, as ordered by the Commission, and made those rates that are effective available to CLECs. However, as stated in Section 252(a)(1):

"Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."

Ionex appears to be making a claim pursuant to the ACG agreement, which was assigned to Feist Long Distance. (SWBT is still trying to sort out the relationships of these companies, and may need to engage in discovery on this issue.) In any event, ACG voluntarily opted into the Sprint-Kansas agreement in December of 1998. Thereafter, including in August of 1999, ACG voluntarily filed amendments to its Agreement, including an amendment to its Schedule of Pricing - UNE. This action took place 6 **months after the Commission's non-final February Order**. If Feist/ACG/Ionex believed that it was entitled to rates from the February, 1999 Order of the KCC, it had every opportunity to request those rates, negotiate on that basis, and arbitrate if it was not able to reach resolution with SWBT. (SWBT notes that ACG states affirmatively in its complaint that it participated in the UNE Cost Docket prior to the issuance of the February, 1999 order.) It was not then, and it is not now, SWBT's

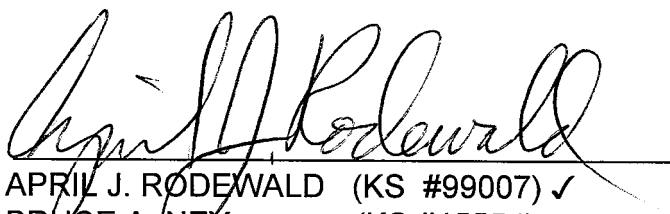
responsibility to do the legal, regulatory and negotiating work for another business entity.

5. SWBT also notes that the rates in the February 1999 order were not permanent, as stated in Ionex's Motion. Further, the order setting permanent recurring rates did not issue until September 1999, and there has still not been an order from the Commission setting permanent nonrecurring rates. Also, as the Commission stated in its Order On Petition For Stay And/Or Motion For Extension Of Time in Docket No. 97-SCCC-149-GIT, dated October 15, 1999, the nonrecurring prices in the February Order were applicable only "[t]o the extent that interconnection agreements do not establish prices for nonrecurring costs" The ACG Interconnection Agreement, voluntarily entered into by the CLEC, had nonrecurring rates contained therein. ACG voluntarily opted into the Sprint Agreement, took the rates contained in that Agreement, participated in the UNE Cost Docket, was obviously capable of requesting and negotiating changes to rates when it so chose, but never requested the rates in the February Order or in the September Order. It is SWBT's position that the contractual language in these various interconnection agreements did not require any other action on its part, and SWBT will lay out those facts in its answer to the complaint.

6. In any event, none of this has any impact on the Section 271 proceeding. There is no "absence of cost-based, nondiscriminatory rates" in the State of Kansas. This Commission has set rates for unbundled network elements following the FCC's guidelines, and those rates are available in the Kansas 271 Agreement, as well as in other approved, voluntarily negotiated interconnection agreements. There is no "devastating impact on competition", nor has SWBT refused to abide by Commission

orders. There is nothing more here than lonex's refusal to accept the obligations of its voluntarily negotiated agreements, and a blatant attempt to blackmail SWBT by threatening the 271 application. The Commission should deny the Motion to Stay and allow the parties to fully develop the facts of this dispute through the complaint process.

WHEREFORE, SWBT respectfully requests that the Commission deny lonex's Motion to Stay Further Proceedings With Respect To SWBT's Section 271 Application.




APRIL J. RODEWALD (KS #99007) ✓
BRUCE A. NEY (KS #15554)
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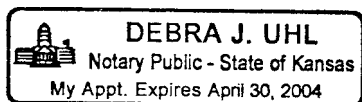
VERIFICATION


I, Charles H. Cleek, of lawful age, and being first duly sworn, now state: I am Executive Director-Regulatory Matters, and have read the above Response on behalf of Southwestern Bell Telephone Company and verify the statements contained herein to be true and correct to the best of my knowledge and belief.



Charles H. Cleek

Subscribed and sworn to before me this 3rd day of November, 2000.





Notary Public

My Appointment Expires: April 30, 2004

ATTACHMENT A



Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Utilities Division
October 30, 2000

CERTIFIED MAIL

Return Receipt Requested

Shawn M. McKenzie
Southwestern Bell Telephone Company
220 East sixth Street
Topeka, KS 66603

RE: Docket No. 01-SWBT-344-COM

Dear Mr. McKenzie:

Enclosed herewith, please find one (1) copy of a formal complaint which is served upon you as the President of Southwestern Bell Telephone Company.

Any questions and correspondence concerning this docket should be addressed to the following Commission staff:

Christine Aarnes
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
(785) 271-3165

Eva Powers
Asst. General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
(785) 271-3288

Please file your answer with the Commission within ten (10) days after receipt hereof and serve a copy of said answer on the Complainant.

Sincerely,


JEFFREY S. WACAMAN
Executive Director

JW:dktrm

cc : Lisa C. Creighton
Attorney for Ionex Communications, Inc.
Christine Aarnes, KCC
Eva Powers, KCC

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President-Kansas

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LEGAL DEPT.
TOPEKA, KANSAS

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the above Response was sent on this 3rd day of November, 2000 as follows:

Via hand-delivery to:

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Assistant General Counsel
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Walker Hendrix
CURB
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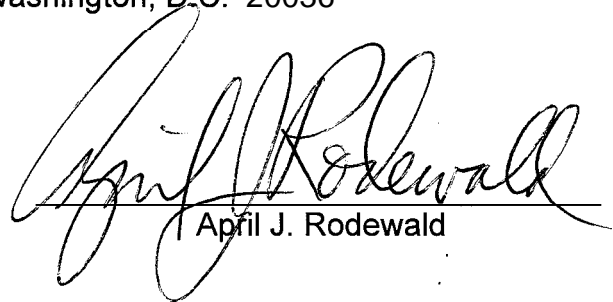
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April J. Rodewald